APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,397	08/06/2003	Christopher N. Kline	END920030058US1	1206

26502   7590   01/27/2011
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ART UNIT	PAPER NUMBER
3623	

NOTIFICATION DATE	DELIVERY MODE
01/27/2011	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte CHRISTOPHER N. KLINE

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Appeal 2009-012273
Application 10/635,397
Technology Center 3600

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Before HUBERT C. LORIN, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

₁   STATEMENT OF THE CASE[2]

₂   Christopher N. Kline (Appellant) seeks review under 35 U.S.C. § 134

₃ (2002) of a final rejection of claims 1, 5-8, 11-14, 18-21, 24-26, and 28, the

₄ only claims pending in the application on appeal. We have jurisdiction over

₅ the appeal pursuant to 35 U.S.C. § 6(b) (2002).

₆   The Appellant invented a way of determining when to run maintenance

₇ operations based on predetermined system criteria (Specification 4:8-9).

₈   An understanding of the invention can be derived from a reading of

₉ exemplary claim 1, which is reproduced below [bracketed matter and some

₁₀ paragraphing added].

₁₁   1. A method for automatically scheduling performance of
₁₂   maintenance tasks to maintain at least one server in a
₁₃   distributed computing environment, comprising:

₁₄   [1] providing a distributed computing environment with a
₁₅   plurality of servers, including said at least one server;

₁₆   [2] monitoring server conditions on said at least one server

₁₇   to dynamically detect at least one predetermined criterion

₁₈   for performing at least one maintenance task

₁₉   on said at least one server

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[2] Our decision will make reference to the Appellant's Appeal Brief ("App.
Br.," filed December 9, 2008) and the Examiner's Answer ("Ans.," mailed
March 10, 2009).

1   in said distributed computing environment; and

2   [3] automatically performing said at least one maintenance task

3   in response to said monitoring step,

4   wherein said at least one predetermined criterion

5   comprises

6   low disk space on said at least one server, and

7   wherein said at least one maintenance task comprises

8   reducing a size of log files

9   stored on said at least one server

10   in said distributed computing environment.

11   The Examiner relies upon the following prior art:

12   McAfee, McAfee Utilities: User's Guide Version 4.0 (Jan. 2001)
13   (McAfee)

14   *Description of the Low Disk Space Notification in Windows XP*
15   http://support.microsoft.com/kb/285107 (Hereafter, Disk Space)

16   *How to Automate the Disk Cleanup Tool in Windows XP,*
17   http://support.microsoft.com/kb/315246 (last visited Jan.4, 2008)
18   (Hereafter, Disk Cleanup)

19   *How to Use the Backup Utility to Back Up Files and Folders in Windows*
20   *XP Home Edition,* http://support.microsoft.com/kb/ 320820/en-us (last
21   visited Jan.4, 2008) (Hereafter, Backup)

22   *Disk Defragmenter Error Codes,* http://www.aumha.org/a/
23   defragerr.php, (last visited Jan.4, 2008) (Hereafter, Error Codes)

24   Claims 1, 5-6, 8, 12-14, 18, 19, 21, 25, 26, and 28 stand rejected under

25   35 U.S.C. § 103(a) as unpatentable over McAfee, Disk Space, and Disk

26   Cleanup.

27   Claims 7 and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable

28   over McAfee, Disk Space, Disk Cleanup, and Backup.

1   Claims 11 and 24 stand rejected under 35 U.S.C. § 103(a) as

2   unpatentable over McAfee, Disk Space, Disk Cleanup, and Error Codes.

3   ISSUES

4   The issue of obviousness turns primarily on whether it was predictable to

5   operate various housekeeping utilities for disk space conservation and

6   backup on a server as well as on stand alone or client computers. The issue

7   also turns on predictability of automating a known process and whether file

8   compression reduces the size of log files.

9   FACTS PERTINENT TO THE ISSUES

10   The following enumerated Findings of Fact (FF) are believed to be

11   supported by a preponderance of the evidence.

12   *Facts Related to the Prior Art*

13   *McAfee*

14   01.   McAfee is a software utilities user guide. McAfee Cover.

15   02.   McAfee deletes and compresses those types of files one

16   specifies. McAfee 33.

17   03.   McAfee's utilities can be placed on a server in a client server

18   network environment. McAfee iii.

19   *Disk Space*

20   04.   Disk Space is directed to a Microsoft Disk Cleanup Wizard

21   utility that starts automatically when a user responds to an

22   automatically created Low Disk Space prompt when disk space

23   runs low. Disk Space 1.

1   *Disk Cleanup*

2   05.   Disk Cleanup is directed to explaining the settings for

3   Microsoft Disk Cleanup Wizard. Disk Cleanup 1-3.

4   06.   Among the options is that of compressing files to reduce size.

5   Cleanup 2.

6   *Backup*

7   07.   Backup is directed to a Microsoft backup utility that copies data

8   files and system state settings. Backup 1-2.

9   08.   You can only back up the System State data on a local

10   computer. You cannot back up the System State data on a remote

11   computer. That is, although the resulting backup data is stored

12   elsewhere, the system state data that is backed up is only that of

13   the local machine. Microsoft's particular backup utility will not

14   retrieve the system state settings from a remote machine. Backup

15   3.

16   ANALYSIS

17   *Claims 1, 5-6, 8, 12-14, 18, 19, 21, 25, 26, and 28 rejected under 35 U.S.C.*

18   *§ 103(a) as unpatentable over McAfee, Disk Space, and Disk Cleanup.*

19   Claim 1 is representative. A server in a distributed computing

20 environment is monitored for low disk space, and when this criterion is met,

21 the size of log files is automatically reduced. The Appellant argues that the

22 art fails to describe the server in a distributed computing environment,

23 automated execution, and reducing the size of log files. Appeal Br. 8-15;

24 Reply Br. 1-4.

1   The Examiner found that McAfee provided the distributed computing

2   environment and monitoring with maintenance tasks; and Disk Space

3   described a low disk space monitor as a specific type of monitoring that was

4   known to be required; and that Disk Cleanup described reducing file sizes

5   generally, which would have included log files. Ans. 4-6.

6   McAfee explicitly recites loading its software on a server in a client-

7   server network environment. FF 03. The Appellant appears to be arguing

8   that this is for storage only and that the software is actually executed on

9   clients. As the cited portion of McAfee is a licensing provision rather than

10   operating instructions, McAfee is silent as to whether execution occurs on

11   the server. But as a server is simply another computer of the type that

12   McAfee monitors, it was at least predictable to one of ordinary skill to run

13   utilities such as those in McAfee on such a server.

14   The Appellant does not contend otherwise, but merely argue the scope of

15   the licensing terms. The Examiner applied McAfee only to show that

16   monitoring software was known to be placed on a server in a distributed

17   computing environment. One of ordinary skill would have operated the

18   software to monitor any computer that exhibited the need for such utilities.

19   A server clearly requires disk cleanup by deleting and compressing files (FF

20   02) given the amount of data traffic that creates temporary storage files.

21   The Appellant also argues that the Examiner misstated as fact that

22   McAfee describes a server in a distributed computing environment. Appeal

23   Br. 16. McAfee's referral to a server that contains a program that is run on a

24   client computer (FF 03) describes a server in a client-server environment. A

1   client-server relationship is in fact a distributed computing environment, as

2   the operation is shared, or distributed, between the client and the server.

3   As to automation, Microsoft's cleanup wizard starts automatically when

4   a user responds to, an automatically created, a Low Disk Space prompt when

5   disk space runs low. FF 04. Thus the cleanup wizard is one that was

6   "automatically performing said at least one maintenance task in response to

7   said monitoring step." The claim makes no further limitation regarding the

8   nature of the automation, so even the automated triggering of the cleanup as

9   in the cleanup wizard is within the scope of the claim. In any event, as the

10   Examiner found, it is obvious to automate a known manual operation where

11   one of ordinary skill knew how to provide such automation. *See Leapfrog*

12   *Enterprises Inc. v. Fisher-Price Inc.*, 485 F.3d 1157, 1163 (Fed. Cir. 2007).

13   As to reducing log files, both McAfee and the cleanup wizard compress

14   files (FF 02 and 06) to reduce file size and log files being text files

15   invariably exhibit size reduction under such compression. The claim does

16   not restrict the scope to only log files, so general compression as in McAfee

17   and the cleanup wizard is within the scope of the claim, as servers invariably

18   produce log files documenting transaction history.

19   The remaining claims are argued either by referring to the arguments in

20   support of claim 1 or by essentially repeating those arguments.

21   *Claims 7 and 20 rejected under 35 U.S.C. § 103(a) as unpatentable over*

22   *McAfee, Disk Space, Disk Cleanup, and Backup.*

23   These claims recite automatically saving configurations and

24   authorizations for instances of applications running on said at least one

25   server in said distributed computing environment. The Appellant argues that

1 Backup only saves system state settings for the same computer that backup

2 is performed and so does not save configurations for instances of

3 applications running on the server. We find this argument to be a corollary

4 to the argument with claim 1 regarding the server. This argument implies

5 the backup utility is not running on a server, since a backup utility running

6 on a server would be running on the same machine as the instances of

7 applications running on that same server. As we found in claim 1, *supra*, it

8 was predictable to run such utilities on a server, as a server produces the

9 same or greater risk of disk degradation as any other computer.

10 *Claims 11 and 24 rejected under 35 U.S.C. § 103(a) as unpatentable over*

11 *McAfee, Disk Space, Disk Cleanup, and Error Codes .*

12 These claims recite automatically alerting an administrator when a

13 maintenance task performed on said at least one server in said distributed

14 computing environment fails. The Appellant repeats the argument regarding

15 a server and distributed computing environment from claim 1, which we find

16 unpersuasive for the same reasons as found *supra*.

CONCLUSIONS OF LAW

18 Rejecting claims 1, 5-6, 8, 12-14, 18, 19, 21, 25, 26, and 28 under 35

19 U.S.C. § 103(a) as unpatentable over McAfee, Disk Space, and Disk

20 Cleanup is not in error.

21 Rejecting claims 7 and 20 under 35 U.S.C. § 103(a) as unpatentable over

22 McAfee, Disk Space, Disk Cleanup, and Backup is not in error.

23 Rejecting claims 11 and 24 under 35 U.S.C. § 103(a) as unpatentable

24 over McAfee, Disk Space, Disk Cleanup, and Error Codes is not in error.

<div style="text-align:center">DECISION</div>

To summarize, our decision is as follows.

- The rejection of claims 1, 5-6, 8, 12-14, 18, 19, 21, 25, 26, and 28 under 35 U.S.C. § 103(a) as unpatentable over McAfee, Disk Space, and Disk Cleanup is sustained.

- The rejection of claims 7 and 20 under 35 U.S.C. § 103(a) as unpatentable over McAfee, Disk Space, Disk Cleanup, and Backup is sustained.

- The rejection of claims 11 and 24 under 35 U.S.C. § 103(a) as unpatentable over McAfee, Disk Space, Disk Cleanup, and Error Codes is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

<div style="text-align:center"><u>AFFIRMED</u></div>

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